

SENATE BILL No. 549

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1.

Synopsis: Internet sale of cigarettes. Provides that the state may bring suit against a person for violating the federal Jenkins Act. Requires a person who sells cigarettes by mail, telephone, or Internet order to notify the buyer that the buyer is responsible for unpaid state cigarette taxes. Provides a civil penalty for failure to notify a buyer that the buyer is responsible for unpaid cigarette taxes.

Effective: July 1, 2003.

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January 23, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 549

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-7-1-24.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 24.5. (a) For purposes of this section, "face to face**
4 **sale" means a sale in which the consumer is in the physical**
5 **presence of the seller at the time of the sale. The term does not**
6 **include a transaction conducted:**

7 **(1) through the mail;**

8 **(2) on the Internet;**

9 **(3) on the telephone; or**

10 **(4) by any other method;**

11 **in which the consumer is not in the physical presence of the seller**
12 **at the time of the sale.**

13 **(b) Except as provided in subsection (c), cigarettes may not be**
14 **sold in a sale that is not a face to face sale.**

15 **(c) A person may engage in a sale of cigarettes that is not a face**
16 **to face sale if:**

17 **(1) all applicable taxes under this chapter have been paid; or**



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(2) the seller places a legible and conspicuous notice on the outside of the container in which the cigarettes are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these cigarettes have been shipped to you from a seller located outside the state in which you reside, the seller has under federal law reported information about the sale of these cigarettes, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

(d) The attorney general may bring suit to enforce this section. If a court enters a judgment for a violation of this section, the court shall impose, in addition to any other remedies, a civil penalty as follows:

(1) If the defendant has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If the defendant has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If the defendant has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If the defendant has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If the defendant has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 2. IC 6-7-1-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 35. (a) It ~~shall be~~ is unlawful to procure or induce the evasion of any tax imposed by this chapter. It ~~shall be~~ is unlawful for any person to advertise, print, publish, or circulate through or by use of any medium of communication any advertisement or offer to sell cigarettes within or into the state of



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1 Indiana in which it is stated or implied that any taxes provided for in
2 this chapter will not or need not be paid.

3 **(b) The attorney general may bring an action on behalf of the**
4 **state against a person for failing to comply with the Jenkins Act (15**
5 **U.S.C. 375 through 15 U.S.C. 378). If the state prevails in such an**
6 **action, the court shall award fees and costs, including attorney's**
7 **fees, to the state in addition to any other awards or penalties**
8 **allowed.**

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